

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Harry Malyska

Confirmation No.: 7175

Patent No.: 7,767,436

Serial No.: 10/582,887

Filed: June 18, 2007

Group Art Unit: 1641

Title: Reducing Time to Result for Blood Bank Diagnostic Testing

Mail Stop Patent Ext.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
UNDER 37 C.F.R. 1.705(d) AFTER PATENT ISSUANCE**

Dear Sir:

Responsive to the Determination of Patent Term Adjustment indicated on the front page of US Patent 7,767,436 (issued August 3, 2010), and in light of the recent ruling in *Wyeth v. Kappos*, No. 2009-1120, slip op. (US Court of Appeal Federal Circuit) the Patentees submit this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705. As stated in 37 C.F.R. 1.705(d):

any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued...

This request is being submitted within two months of the issuance of the US Patent 7,767,436, and complies with the relevant deadline specified in 37 C.F.R. 1.705(d). Thus, Patentees contend this request is timely.

**1. Payment of fee under §1.18(e) or §1.18(f)**

Patentees hereby authorizes the Patent Office to charge the fee set forth in §1.18(e) or §1.18(f) or and any other fees that may be due to Deposit Account 100750/MTS5003USPCT/CKG.

## **2. Statement of Facts**

Patentees respectfully request that an additional 8 days of Patent Term Adjustment be added to the 628 days of additional patent term for Patent Office delay already calculated on PAIR, resulting in a total Patent Term Adjustment of at least 636 days.

### **2 A. “USPTO “A Delay” Calculation**

The USPTO’s determination of the delay in prosecution, which, for purposes of this request and in keeping with the explanation provided in *Wyeth*, Patentees will refer to as the “A delay. The “A delay” patent term adjustment was determined to be 317 days as posted on PAIR.

### **2B. “B Delay” Calculation**

37 CFR § 1.702 (b), states:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b); (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a); (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181; (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or (5) Any delay in the processing of the application by the Office that was requested by the applicant.

The USPTO must issue a patent within 3 years (not including exclusions) after the date which the application was filed under 35 USC 111(a). The period of credit adjustments begins on the day after the date that is 3 years after the date on which the application was filed and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. The instant application was filed under 35 USC

111(a) on June 18, 2007, and issued on August 3, 2010. Thus, the ‘B delay’ resulting from the patent application pending longer than three years is at least 339 days.

## **2D. “B Delay” Calculation Must be Added to the “A Delay” Calculation**

This application issued as a U.S. Patent on August 3, 2010, and nothing has occurred to cut off any further patent term adjustment that would otherwise accrue under 37 C.F.R. §1.702(b). The total B delay The Patent Office however has **not** included in the Patent Term Adjustment the days related to the “B delay,” which are the days delay resulting from an application pending longer than three years. According to 37 C.F.R. 1.703(b):

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued...

Thus, according to the *Wyeth* decision, Patentees are entitled to both the “A delay” 317 days and the “B delay” of 339 days, minus 20 overlap days. For these reasons, the Patent Term Adjustment for this case should be 636 days.

## **3. Other Circumstances**

As required under 37 C.F.R. §1.705(b)(iii) and (iv)(B), Patentee confirms that, (1) this application is not subject to a Terminal Disclaimer; and (2) except for the Patentee’s delay periods set forth above, there were no other circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

## **4. Conclusion**

In light of the foregoing, the Patentees respectfully request that an additional 8 days of Patent Term Adjustment be added to the days of additional patent term for Patent Office delay already calculated on PAIR, resulting in a total Patent Term Adjustment of

636 days. If a telephone conference would expedite the prosecution of this Request for Reconsideration of Patent Term Adjustment, please contact the undersigned agent as indicated below.

Respectfully submitted,

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